STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D R RICE, Minor.

UNPUBLISHED
November 12, 2013

No. 315766
Mecosta Circuit Court
Family Division
LC No. 11-005690-NA

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

The trial court assumed jurisdiction over the minor child based on respondent's plea. More than one year later, the trial court authorized a petition seeking termination of respondent's parental rights. Following a termination hearing, the court entered an order terminating respondent's parental rights. Respondent does not challenge the statutory bases on which the trial court relied in terminating her parental rights or argue that termination was not in the child's best interests. Rather, she argues that petitioner violated the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., by failing to provide her with specialized services to accommodate her cognitive impairment.[1]

In *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000), this Court held that disabled parents may not raise violations of the ADA as a defense to termination of parental rights proceedings because the proceedings do not constitute "services, programs or activities" within the meaning of the ADA. This Court explained, however, that the ADA requires the Department of Human Services (DHS) "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services." *Id.* Accordingly, petitioner's reunification services and programs are required to comply with the ADA. This Court further noted that "the state legislative requirement that the [DHS] make reasonable efforts to reunite a family is consistent with the ADA's directive that disabilities be

[1] A psychological evaluation of respondent determined that she functions within a mild range of mental retardation. "Mental Retardation" is a disability within the meaning of the ADA. 28 CFR 35.104.

reasonably accommodated." *Id.* at 26. "In other words, if the [DHS] fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.*

Petitioner was made aware at the time of the adjudicative hearing of the need to make reasonable accommodations for respondent's cognitive impairment. At a subsequent review hearing, a Department of Human Services (DHS) caseworker testified that petitioner sufficiently tailored its services and that all of respondent's individual counselors and teachers were made aware of her cognitive impairment and were accommodating it. Both a psychologist who had evaluated respondent and the DHS caseworker testified that their recommendations for services took into account respondent's cognitive impairment. Both testified that they relied on the experience and expertise of the professional counselors and therapists involved to determine how to tailor their services to accommodate respondent's cognitive limitations. The DHS caseworker testified that she said she spoke with respondent's counselors about her cognitive impairment and all of them assured her that they would tailor their programs appropriately. The court specifically determined that respondent's cognitive impairment was taken into consideration by her service providers who accommodated her impairment by utilizing tailored methods such as repetition and role modeling. The record establishes that respondent had the assistance of a variety of tailored services to help her with her parenting skills but respondent failed to benefit from the services. "[I]f a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail," whether the parent is disabled or not. *Id.* at 28. We find no clear error in the trial court's finding that reasonable efforts were made to reunify the family. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

Respondent also argues that the lower court prematurely removed the child from her care. Under MCR 3.965(C)(2), if a court determines at a preliminary hearing that remaining in his or her parent's care would be contrary to a child's welfare, the lower court must remove the child from its home. However, before doing so, it must find that petitioner made reasonable efforts to prevent removal or that making such efforts is not required. MCR 3.965(D)(2).

Here, the lower court properly found that it would be contrary to the minor child's welfare to remain in respondent's home. First, the lower court took judicial notice of respondent's previous voluntary termination of parental rights as a result of her failure to protect her two older children from sexual abuse. Second, a caseworker testifying at the preliminary hearing expressed her concern for the child's safety due to respondent's history of domestic violence and the impact of her cognitive impairment on her ability to care for a newborn. Considering the caseworker's involvement in respondent's previous case, the lower court reasonably heeded her recommendation. Moreover, considering that respondent did not protect

two other children from serious sexual abuse, petitioner was not required to make reasonable efforts to prevent removal. MCR 3.965(D)(2)(a); MCL 722.638(1)(a).[2]

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering

[2] In any event, just months before the preliminary hearing, respondent had participated in a multitude of services in connection with her previous case, including parenting classes and a program for domestic violence.